

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<b>United States District Court</b>	<b>District</b> Puerto Rico
<b>Name</b> (under which you were convicted): Pedro De Jesus-Mateo	<b>Docket or Case No.:</b> 98-CR-009 (CC)
<b>Place of Confinement:</b> U. S. Penitentiary, Atlanta, Georgia 30315	<b>Prisoner No.:</b> 16201-069
<b>UNITED STATES OF AMERICA</b>	<b>Movant</b> (include name under which you were convicted) Pedro De Jesus-Mateo

## MOTION

1. a) Name and location of court that entered the judgment of conviction you are challenging: \_\_\_\_\_  
United States District Court, District of Puerto Rico

05 APR 1965  
CLERK  
U.S. DISTRICT COURT  
SAK

(b) Criminal docket or case number (if you know): 98-CR-009 (CC)

2. (a) Date of the judgment of conviction (if you know): Verdict 08/13/99

(b) Date of sentencing: 04/28/00

### 3. Length of sentence: Life

4. Nature of crime (all counts): Title 21 U.S.C. §841(a)(1) and §846

Conspiracy to possess with intent to distribute controlled substances and distribution of controlled substances.

5. (a) What was your plea? (Check one)

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

NA

6. If you went to trial, what kind of trial did you have? (Check one)  Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No

8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: First Circuit Court of Appeals

(b) Docket or case number (if you know): 00-1711

(c) Result: Conviction and Sentence Affirmed Published at 373 F.3d 70 (1<sup>st</sup> Cir. 2004)

(d) Date of result (if you know): June 24, 2004 Rehearing denied on: October 13, 2004

(e) Citation to the case (if you know): U.S. v. De Jesus- Mateo, 373 F.3d 70 (1<sup>st</sup> Cir. 2004)

(f) Grounds raised: (1) District Court erred by declining to order mistrial after witness provided testimony of uncharged prior bad acts;  
(2) District Court erroneously relied on two prior drug convictions under 21 U.S.C. §851.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): 04-6843

(2) Result: Denied

(3) Date of result (if you know): November 15, 2004

(4) Citation to the case (if you know): De Jesus-Mateo v. U.S., 159 L.Ed 2d 248 (2004)

(5) Grounds raised: (1) Whether District Court erred by enhancing Movant based on convictions encompassed in conspiracy; (2) Whether District Court erred in not declaring mistrial due to prejudicial testimony; (3) Blakley v. Washington, 542 U.S. --- (2004)

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A \_\_\_\_\_

(5) Grounds raised: N/A \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: N/A \_\_\_\_\_

(8) Date of result (if you know): N/A \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A \_\_\_\_\_

(2) Docket or case number (if you know): N/A \_\_\_\_\_

(3) Date of filing (if you know): N/A \_\_\_\_\_

(4) Nature of the proceeding: N/A \_\_\_\_\_

(5) Grounds raised: N/A \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: N/A \_\_\_\_\_

(8) Date of result (if you know): N/A \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A  

---

---

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Movant was denied Effective Assistance of Counsel guaranteed by Sixth Amendment, U.S. Constitution. *Strickland v. Washington* 466 U.S. 688 (1984); *U.S. v. Natanel*, 938 F.2d 302 (1<sup>st</sup> Cir. 1991)  

---

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
See Memorandum of Facts and Law. Movant's memorandum is hereby incorporated by reference in this motion  

---

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel claims properly raised under 28 U.S.C. §2255. *Massaro v. U.S.*, 155 L.Ed 2d 714 (2003)  

---

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A  

---

Name and location of the court where the motion or petition was filed: N/A  

---

---

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: No previous post-conviction.

**GROUND TWO:** Movant was deprived effective assistance of appellate counsel. Fifth & Sixth Amendment, U.S. Constitution, *Evitts v. Lucey*, 469 US 387 (1985); Kitchen Sink Brief Case, 250 F.3d 1073 (7<sup>th</sup> Cir. 2000).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
See Memorandum of Facts and Law as incorporated herein.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective assistance claims properly raised in §2255 motion.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state: No prior post-convictions.

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know):

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: No prior post-conviction.

---

---

---

---

**GROUND THREE: Violation of Due Process of Law, Fifth Amendment, U.S. Constitution. Movant actually innocent of enhanced portion of sentence. Spence, 219 F.3d 162 (2<sup>nd</sup> Cir. 2000)**

---

---

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
See attached Memorandum incorporated by reference herein.

---

---

---

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective assistance of counsel, Procedural claim.

---

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state: No Previous post-conviction.

---

Type of motion or petition: N/A

---

Name and location of the court where the motion or petition was filed: N/A

---

Docket or case number (if you know): N/A

---

Date of the court's decision: N/A

---

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A  
\_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): N/A  
\_\_\_\_\_  
\_\_\_\_\_

Date of the court's decision: N/A  
\_\_\_\_\_  
\_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Ineffective Assistance of Counsel.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GROUND FOUR:** N/A  
\_\_\_\_\_  
\_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

---

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

---

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

---

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

---

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Motion to Vacate under 28 U.S.C. §2255 proper vehicle to raise issues herein presented. Massaro v. U.S., 155 L.Ed 2d 714 (2003); Sawyer v. Whitley, 505 U.S., 333 (1992); Murray v. Carrier, 477 U.S. 478 (1986)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Juan F. Matos de Juan

\_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

\_\_\_\_\_

(c) At trial: Jose Vasquez

\_\_\_\_\_

(d) At sentencing: Same as above

\_\_\_\_\_

(e) On appeal: Raymond L. Sanchez Maceira  
\_\_\_\_\_  
\_\_\_\_\_

(f) In any post-conviction proceeding: Pro Se  
\_\_\_\_\_  
\_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A  
\_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A  
\_\_\_\_\_  
\_\_\_\_\_

(b) Give the date the other sentence was imposed: N/A  
\_\_\_\_\_

(c) Give the length of the other sentence: N/A  
\_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. \* Movant's Petition for Writ of Certiorari was denied by the Supreme Court on November 15, 2004. Under 28 U.S.C. §2255 movant's motion is timely filed.

\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

IN FORMA PAUPERIS DECLARATION

---

[Insert appropriate court]

\* \* \* \* \*

Therefore, movant asks that the Court grant the following relief: (1) Order respondent to make answer; (2) allow movant to file traverse in reply to answer; (3) conduct fact development and evidentiary hearing; (4) Vacate Judgement.

or any other relief to which movant may be entitled.

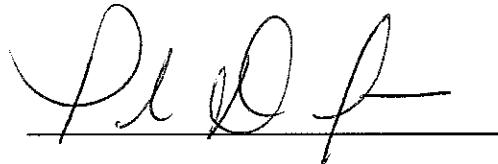
XXXXXXXXXXXXXXXX

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_

04-05-05 (month, date, year).

Executed (signed) on 05-05-05 (date).



Signature of Movant

Pedro De Jesus-Mateo

#16201-069

U.S. Penitentiary

P.O. Box 150160

Atlanta, GA 30315

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_